

Andover Zoning Board of Appeals

February 21, 2008

Selectmen's Conference Room, 3rd Floor, Town Offices, 36 Bartlet Street, Andover

The meeting opened at 7:12 p.m.

PETITION NO. 3762

PETITIONER: Andover Realty

PREMISES AFFECTED: 429-431 South Main St

MEMBERS: Anderson, Jeton, Bevacqua, Brown (McDonough arrived at 7:13 p.m.)

Bill Perkins represented himself & his wife. He agreed to a 4-member board. Also present were Thomas Urbelis, Town Counsel, and Ann Constantine, Chair of Design Review Board (DRB). Dick Cuoco, engineer, presented the revised plan depicting the increase in footprint from 3500 to 3800 sq. ft. The gross floor area will increase from 5200 to 5500 sq. ft. The Planning Board continued their hearing to next week regarding the driveway access and traffic movements on that driveway. Cuoco felt that the ZBA would defer to Planning. DRB asked for greater detail on signage. Anderson informed Ms. Constantine that they are not dealing with signage now. Brown emphasized the need for a plan to reference in writing the decision and the importance of both ZBA & Planning reviewing the same plan. Cuoco noted the floor plan date of February 2008. Anderson reminded the petitioner that they had expected Planning board approval/decision + plans to reference in the ZBA decision. Brown asked for the exact square footage and number of outdoor seats. Cuoco stated that the number of outdoor seats is the same, but a different configuration. Anderson emphasized the need for the exact number and seating plan. McDonough made a motion to continue to the 3/6/08 meeting. Bevacqua seconded the motion & the Board voted (5-0) to continue to the 3/56/08 meeting.

PETITION NO. 3759

PETITIONER: Killorin

PREMISES AFFECTED: 36 Central St

MEMBERS: Anderson, Jeton, Bevacqua, Brown, McDonough

Attorney Thomas Caffrey represented the petitioners' four alternatives to the prior denial without prejudice, which was appealed. He submitted a memo dated 1/10/08. They have had Preservation Commission & DRB review. Preservation didn't want any changes, but preferred site 4 A2 building rendering. DRB preferred no change. They contacted the abutters and counsel (Attorney Lavoie) to meet, but received no response. Only Christoforo & Ryan acknowledged receipt of the letter. A Preservation Restriction was prepared and Mass. Historic Preservation Commission was contacted. Caffrey gave an overview of the 68 year old restriction and cited Chapter 184 Section 123 regarding conditions or restrictions unlimited as to time... [are] limited to 30 years... except in cases of gifts.... Section 34 of Chapter 184 also states that "... shall not limit by restriction in four specific cases, but not in this case. He noted Sections 23 + 26 that recognize other restrictions held by government body are subject to 30 year limitation. Then Section 28 reinforces a statutory bias / prejudice against perpetual restrictions recorded prior to 1/1/1962 good for 50 years. Caffrey argued that the deadline to extend the restriction was 1990 adding that the other property owners/abutters waived interest in restriction of all lots in the subdivision. Caffrey emphasized that the proposed house is suitable, modest &

in character with the neighborhood. Anderson asked if Mrs. Killorin's will had any instructions on what she wanted to do with the property. Caffrey stated that there were none. George Namour, 3 Main St., architect, informed the Board that he reviewed alternative locations for the building on the proposed lot and found #4 to be closer to the corner with a lower cape-style profile like others on the street. The Board discussed several issues about the proposal, including the trees & stone wall to remain, ledge, earthwork to accommodate the garage, slope disturbance (none will violate the by law). Anderson asked about the existing rear setback of the house at 36 Central Street, noting that it is missing from the plan & appears it would not conform after subdivision. Bill McLeod, engineer, emphasized that there will be no change to that dimension, which is approximately 15'. Anderson stated that the 30' rear setback is required & there is no request for a variance to render the existing structure non-conforming, since School St. would no longer be considered the front. McLeod disagreed. Anderson cautioned that the application may be incomplete without a variance request. Jeton asked about the driveways for the two lots. McLeod explained that it is to avoid sharing & maintaining one common driveway. Bevacqua asked for the distance from the drive to Chestnut Street. The distance was not known. The Board discussed other changes to the property, including but not limited to a garage, removal of one 42" hemlock, and the possibility of requesting a Dimensional Special Permit for Historic Preservation (Section 7.9) for #36. Several neighbors voiced opposition and concerns over what might be built if approved. Ann Constantine, Design Review Board (DRB) Chair, informed the Board of DRBs finding the style & detail of the proposal too modest & suggested the new structure appear like a carriage house to #36. Town Counsel Thomas Urbelis commented on Attorney Caffrey's suggestion that prior conditions for modification aren't enforceable due to 30-year limitation, noting that Ch. 184, Section 23, 26-32 deal with conveyance issues with no reference to imposed conditions, only conveyed conditions. The prior conditions were imposed by Ch. 40A & the ZBA. Further, if ZBA conditions expired, then all would be invalid eventually, including Conservation & Subdivision Control Law. Urbelis added that voluntary restrictions can & do expire. Anderson pointed out a 40B case from Wellesley that stated as long as the comprehensive permit is being taken advantage of, the affordability is in perpetuity. Urbelis agreed. Caffrey agreed with the affordable housing and conservation conditions, but argued that other restrictions held by a governmental body expire, other than affordable housing & Conservation Commission. Eric Killorin, Trustee, commented that the issue is being missed and emphasized that the property will be sold so that the land owners can maximize the potential of their property. Anderson suggested that interior alterations could be done to create four condominiums. Killorin stated that they would consider this possibility. Bevacqua made a motion to close the public hearing. McDonough seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate. Brown stated that he prefers a modest proposal adding that the streetscape is the most significant aspect of the property. Bevacqua agreed with Brown, noting reluctance to put aside or change the previous decision & the uncertainty of new development if the existing house were demolished and subdivided. McDonough also agreed focusing on the fact that the existing structure is not a single family dwelling now, but if it were, it would be a different situation. Jeton agreed, commenting that the Killorins have owned the property for a long time and could have, but didn't seek relief before. Jeton stated that she thinks Geneva Killorin would be shocked and urged the Killorin family to explore the option of working with the Town. Anderson explained that the reason the decision was written as it was is an all or nothing approach. Nothing has happened and he believes the prior decision imposed the condition of no

further subdivision while the 8 units exist. He agreed with Urbelis regarding the inapplicability of the 30 year restriction; that the previous condition is/should be enforceable and that moving/subdividing the property was considered a major change. Further, the rear setback would be non-conforming on the existing structure if subdivided and also that the landscape is important historically. Bevacqua made a motion to deny the request for proposed modification to lift the condition of further subdivision. Brown seconded the motion & the Board voted unanimously (5-0) to deny the request for proposed modification to lift the condition of further subdivision.

The meeting adjourned at 7:48 p.m.